

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 139, AFL-CIO and Associated Plumbing, Heating and Cooling Contractors of Great Falls, Montana.
Case 19-CB-3952

June 2, 1981

DECISION AND ORDER

Upon a charge filed on November 24, 1980, by Associated Plumbing, Heating and Cooling Contractors of Great Falls, Montana, herein called the Employer or the Association, and duly served on United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 19, issued a complaint and notice of hearing on January 8, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On February 24, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on March 3, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has filed no response to the Notice To Show Cause and the allegations of the Motion for Summary Judgment stand uncontroverted.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer

filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that, unless an answer to the complaint is filed within 10 days of service thereof, "all of the allegations in said Complaint shall be deemed to be admitted as true, and may be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, counsel for the General Counsel, on February 9, 1981, telephonically contacted Respondent's business manager and advised him of the requirement that an answer be filed and was informed by the business manager that no answer would be forthcoming, and, by letter of the same date to counsel for the General Counsel, the business manager stated that he did not intend to file an answer.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we shall grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Associated Plumbing, Heating and Cooling Contractors of Great Falls, Montana, is an organization composed of employers engaged in the plumbing, heating, and cooling industry, and exists for the purpose, *inter alia*, of representing its employer-members in negotiating and administering collective-bargaining agreements with Respondent. The Association, collectively, during the 12 months preceding the issuance of the complaint, a representative period, in the course and conduct of its business operations, had gross sales of goods and services valued in excess of \$500,000. During the same period, the Association, collectively, sold and shipped goods, or provided services from its facilities within the State of Montana to customers outside said State, or sold and shipped goods, or provided services to customers within said State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value in excess of \$50,000. Further, during the same period, the Association, collectively, purchased and caused to be transferred and delivered to its facilities within the State of Montana goods

and materials valued in excess of \$50,000 directly from sources outside said State, or from suppliers within said State which in turn obtained such goods and materials directly from sources outside said State.

We find, on the basis of the foregoing, that the Association is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 139, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Unit

At all times material herein, Respondent has been, and is now, the lawfully designated exclusive collective-bargaining representative in the following appropriate unit of the employees of the Association employer-members:

All journeymen plumbers, apprentice plumbers and working foremen plumbers employed by the individual employers of the Association.

B. The 8(b)(3) Violation

The Association and Respondent are parties to a collective-bargaining agreement, effective from July 1, 1979, to July 1, 1982. Said agreement contains, *inter alia*, an exclusive hiring hall provision detailing procedures concerning dispatches of employees to Association employer-members. Such provision requires immediate referral by Respondent of employees upon request by the Association employer-members. Further, article IV, section 4(b)(7), of that agreement provides:

It will be the responsibility of the member on the list (while on travel card and working outside the jurisdiction of Respondent) to keep in contact, at his own expense, with the business manager if he wishes to return to work in the jurisdiction of Local 139.

On or about October 7, 1980, at a union meeting attended by Respondent's business manager, Respondent's executive board, and its members determined to change unilaterally the exclusive hiring hall provision, including article IV, section 4(b)(7), by requiring the business manager to call those members on travel card, notify them of available

employment, and give them a number of hours to respond. This change was effected without the consent of the Association. Further, since October 7, 1980, Respondent has refused and continues to refuse to dispatch employees upon request of the Association employer-members, in accordance with the terms of the agreement.

Accordingly, we find that by unilaterally changing the hiring hall procedure as set forth in the parties' agreement without the consent of the Association, and by refusing to dispatch employees upon request of Association employer-members in accordance with the terms of the agreement, Respondent has, since on or about October 7, 1980, and at all times thereafter, refused to bargain collectively with the Association. We further find that by such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(3) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(3) of the Act, we shall order that it cease and desist therefrom. We also shall require Respondent to honor and abide by the hiring hall procedures as specified in the collective-bargaining agreement between the parties and as implemented prior to the unilateral change on or about October 7, 1980, and to dispatch employees upon request of the Association employer-members in accordance with the terms of that agreement.

CONCLUSIONS OF LAW

1. Associated Plumbing, Heating and Cooling Contractors of Great Falls, Montana, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 139, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All journeymen plumbers, apprentice plumbers and working foremen plumbers employed by the

individual employers of the Association, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By unilaterally changing, on or about October 7, 1980, the hiring hall referral procedures as specified in the collective-bargaining agreement, effective from July 1, 1979, to July 1, 1982, between Respondent and the Association, and as implemented prior to on or about October 7, 1980, and, since that date, by enforcing the unilateral change by refusing to dispatch employees upon request of the Association employer-members in accordance with the terms of that agreement, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(3) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 139, AFL-CIO, Great Falls, Montana, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Association of Plumbing, Heating and Cooling Contractors of Great Falls, Montana, by unilaterally changing hiring hall procedures as specified in the collective-bargaining agreement between the parties and as implemented prior to on or about October 7, 1980, and, since that date, by enforcing the unilateral change by refusing to dispatch employees upon request of the Association employer-members in accordance with the terms of the agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Honor and abide by the hiring hall procedures as specified in the collective-bargaining agreement between the Association and Respondent and as implemented prior to on or about October 7, 1980, and dispatch employees upon request of the Association employer-members in accordance with the terms of that agreement.

(b) Post at its 1112 Seventh Street South, Great Falls, Montana, office copies of the attached notice marked "Appendix."¹ Copies of said notice, on

forms provided by the Acting Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Acting Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with the Association of Plumbing, Heating and Cooling Contractors of Great Falls, Montana, by unilaterally changing hiring hall procedures as specified in the collective-bargaining agreement between the Association and us and as implemented prior to on or about October 7, 1980, and by enforcing such unilateral change by refusing to dispatch employees upon request of the Association employer-members in accordance with the terms of that agreement. The bargaining unit is:

All journeymen plumbers, apprentice plumbers and working foremen plumbers employed by the individual employers of the Association.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL honor and abide by the hiring hall procedures as specified in the collective-bargaining agreement and as implemented prior to on or about October 7, 1980, and WE WILL dispatch employees upon request of the Asso-

¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by

ciation employer-members in accordance with the terms of that agreement.

UNITED ASSOCIATION OF JOURNEY-
MEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUS-
TRY OF THE UNITED STATES AND
CANADA, LOCAL 139, AFL-CIO